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SUPREME COURT, U.S.

Case No. 81-6172

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM D. CHRISTOPHER,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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OPINION BELOW

The opinion of the Florida Supreme Court sought by Petitioner for review is officially reported as Christopher v. State, 407 So.2d 198 (Fla. 1981).

STATEMENT OF THE CASE

The Respondent is dissatisfied with the Petitioner's statement of the facts in that it presents only an isolated and brief segment of the dialogue which had long preceded the Petitioner's taped confession by over two hours. Respondent considers it necessary to provide a full recount of the sequence of events and circumstances which led up to and surrounded the Petitioner's confession.

On May 10, 1978, the Petitioner had filed a Motion to Suppress his confession in the state trial court (A1-2). Petitioner asserted two grounds for the motion:

(1) Petitioner's confession was involuntary in that it was the product of express or implied promises;

(2) Petitioner's waiver of his right against self incrimination was a nullity since he allegedly "never expressly stated that he did not wish to consult with a lawyer prior to the interrogation" (A1).

A hearing on this motion was held before the state trial judge on May 19, 1978 (A4-138). The facts as adduced from the text of the suppression hearing (A4-138) and the Petitioner's prior taped statements (A139-190, 191-207) are as follows:

Deputy Young of Collier County, Florida, testified that on September 22, 1977, he was called by Sergeant Boswell of the

Memphis Police Department homicide division and informed that the Petitioner had been arrested in Memphis on a warrant for the murder of George Ahern. Deputy Young went up to Memphis that day, met with the Petitioner in the jail at the Memphis Police Department and had him brought up to Captain Smith's office on the third floor (A9). Captain Smith is in charge of the Memphis homicide division. His office is an L-shaped office, quite large with a desk, chairs, couch and table (A10). Photographs of the office were introduced into evidence at the hearing (A66). Petitioner was introduced to the officers in the room, consisting of Captain Smith, Sergeant Boswell, Lieutenant McCachren and Deputy Young (A10). After the introduction, Petitioner was advised of his Miranda rights from Deputy Young's Miranda card (A11). At the time, Petitioner was wearing Levis, tennis shoes and no shirt. Petitioner did not appear to be under the influence of any alcohol or drugs (A10). He responded to Young's questions, responded that he understood his rights, expressly did not want an attorney, and would talk to the officers (A13). Deputy Young then advised the Petitioner why he and Officer Mills had come up to Memphis and asked the Petitioner if he minded that they tape the conversation. He stated he did not mind (A13).

Young then turned on the tape recorder, named the people in the room for purposes of the tape and re-advised Petitioner of his Miranda rights for a second time from his card. This reading of Miranda rights was within five (5) minutes of the previous first reading (A14). This taped conversation is included in the annexed Appendix at A139-190.

This first tape began at 7:36 p.m. and ran for one hour and four minutes (A15-16). During the first taped statement, Deputy Young started the interview and Lieutenant Mills did

the questioning (A15).[1] The tape reflects that after a lengthy dialogue between the officers and the Petitioner, Lieutenant Mills suddenly indicated to the Petitioner that he did not believe his story:

> "MILLS: Bill, you know, Harold and I have been working on this since day one. And -- there's not, not a whole lot about the total situation that we don't know. Just let me say this. This is your situation, this is your ball game. You're old enough, I don't have to tell you how to play it, you play it how you want to, you know how I will play it.
>
> CHRISTOPHER: Well -- I'm going to say this. I know you're all going to try to burn me, you know.
>
> MILLS: I'm going to stick to the facts.
>
> CHRISTOPHER: Okay. Then I'm sticking to the facts. I never pulled a trigger on nobody in my life buddy. Never.
>
> MILLS: Bill, if that's the case, I can't understand why you're telling us what your're telling us.
>
> CHRISTOPHER: I don't understand what you mean by that.
>
> MILLS: I mean what you're telling us is just not true.
>
> CHRISTOPHER: Like you say, we're both playing a ball game.
>
> MILLS: I'm not playing a game.
>
> CHRISTOPHER: I'm not either.
>
> MILLS: I'm speaking to the facts.
>
> CHRISTOPHER: Okay. Okay. Fact one. Did I or did I not kill one or both of these people, I mean, I've been charged with killing uh, uh, with Charlie's right?
>
> MILLS: Right.
>
> CHRISTOPHER: Okay. Am I charged with killing Bertha too? I didn't do it, that's all I can tell you, you know.
>
> YOUNG: You didn't kill Charlie, or you didn't kill Bertha?

1/ In this first tape, Petitioner tells the "murder-suicide" story in which Ahern is alleged to have gone into the bedroom and shot himself in the head. Petitioner after hearing the shot, went into the bedroom only to see Ahern falling from the bed to the floor. He then stated that he went into the bathroom and found Bertha Skillin dead on the floor. She, too, had been shot in the head (A16).

CHRISTOPHER: I didn't kill neither one of them."

(A177-178)

Deputy Young emphasized to the Petitioner that he disbelieved Petitioner's story of Ahern's "suicide" since Ahern could not have possibly shot himself three times (A187). The officers then asked the Petitioner to explain his daughter's actions in the incident since she had left home, travelled, and "hid out" with the Petitioner (A185). The officers also felt that Norma was still a witness (A100) and may have been the motive for Ahern's murder:

> "YOUNG: Have you ever heard anybody tell you that Charlie [Ahern's nickname] or Norma or anybody ever tell you that he had made passes at her?
>
> CHRISTOPHER: Yeah. I've heard that from people up here in Memphis. He even pulled the blanket up on her, you know, while I was down there. I said something to him. What am I going to do? Hit an old fifty, some odd year old man? He's sick, or shoot him? That's really something to shoot somebody over though, isn't it?
>
> YOUNG: Well, that is why we're trying to find out why he was shot."

Moreover, Petitioner knew that he was the one charged with the murders, not Norma.[2] Petitioner then stated that if the officers were accusing him of murder he has "nothing else to say". The officers reminded the Appellant at that point . . .

> "MILLS: You were accused when you came in here. You knew you were accused --
>
> CHRISTOPHER: That's right. That's right.
>
> MILLS: -- you knew what you were accused of, and I told you what the girl was accused of, so don't make out like you don't know what you're accused of.
>
> CHRISTOPHER: Oh, ah, -- I know what I'm accused of. I know that I'm accused of

---

2/ It affirmatively appears from the second tape, discussed infra, that the only people accusing Norma of murder were the members of Petitioner's own family (A206-207). Petitioner also stated that he was clearly aware that Norma was only being charged as "a runaway" (A179).

both murders."

(A184)

Appellant continued to state that he was "upset" about the fact that the officers were "bringing his daughter up here. . .", and emphasized that his daughter had nothing to do with the deaths (A185).

After some brief discussion regarding Petitioner's daughter and his family, the questioning immediately ceased at Petitioner's request:

> "CHRISTOPHER: Well, look, I'm just constantly telling lies, look I ain't got nothing to say at all, pete, why I have, you know and that's it. I ain't saying nothing else.
>
> MILLS: Okay.
>
> CHRISTOPHER: That I'm charged with two murders, --------, is all I can say.
>
> MILLS: Okay. This brings us up to another point, which has nothing to do with what we're talking about. Ah, we're here from Florida and these warrants, these warrants are from Florida. Which you know you have to be extradited down there. That can come about several different ways, you can sign on whether you want -------- here. Ah, would you sign a waiver and go back?"

(A189-190)

At that point, the tape recorder was turned off promptly upon Petitioner's request (A190).

After the taped conversation was concluded, Petitioner inquired as to the existence of charges against his half-sister and half-brother (A17). Lieutenant Mills responded that he thought that they were being charged by the Memphis Police Department with aiding and abetting or accessory after the fact (A18). However, the officers from Collier County, Florida, emphasized to the Petitioner that they "had no control over" any possible Tennessee charges (A18). Officer Mills also in-

formed the Petitioner at this time that his daughter Norma was "being charged as a runaway, and she may be returned to Florida under those charges" (A101), pursuant to a "pick-up order" signed by Collier County, Florida, Judge Trettis (A18).

During this time, after the taping session, they were more or less taking a break, drinking coffee and smoking cigarettes (A70). Petitioner complained about being cold down in the jail and the Captain assured him he would get him a jacket (A70). Petitioner then went through his "murder-suicide" story again (A70). He was not being questioned at this time but was merely reciting the same story again on his own (A19).

Captain Smith then asked Lieutenant Mills if he could say something to the Petitioner. At that time, he told Petitioner that the story he was telling was not sustained by the facts as they knew them from the investigation and that Petitioner undoubtedly had a logical reason for doing what he did; that it wasn't logical to Curtis Mills but that he was sure it would have to be logical to the Petitioner (A71).

Thereafter, Petitioner "remained silent for a few minutes: (A102). After the brief period of silence, Petitioner suddenly started talking about years ago when Norma was born and given up for adoption (A20-21). He told a narrative covering the time up to the scheme at the victim's house (A20-21, 103). This, again, was not a question and answer period but was his own narrative story without questions being interjected (A21, 103). In this story he confessed to being the murderer of both victims (A21-22, 103).

Following this confession, Petitioner requested to call his mother for some clothes and cigarettes.[3] He was allowed to make the call from Captain Smith's office phone (A23, 72, 104). During the call, Petitioner placed his hand over the

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3/ He had been supplied a jacket by Sergeant Boswell and had smoked almost a full pack of Deputy Young's cigarettes.

phone receiver and asked Captain Smith about his brother and sister (A72). Captain Smith and Lieutenant Mills stated that they would not pursue an aiding and abetting charge against his brother and sister (A72). The Captain then told the Petitioner that his mother could pick them up when she brought the clothes (A24, 72, 104-105).

After the telephone call, Petitioner was asked if he would write out a statement. He stated he didn't want to write it out but he agreed to a taped statement (A24, 72, 105). In this second tape (A191-207), Petitioner again gave a confession to the two murders after being advised of his Miranda rights for a third time (A193-194). The second taped statement began at 10:25 p.m. and ended 19 minutes later at 10:44 p.m. (A193, 207). The following dialogue appears at the beginning of the taped confession:

> "YOUNG: Today's date is September the 9th 1970 -- correction, September the 22nd, 1977. The time is 10:25 p.m. Location is ah, Memphis Police Department, Homicide Squad, Captain Tommy Smith's office. This will be a taped interview of WILLIAM D. CHRISTOPHER, white male, age 35. Present during this interview will be ah, Lt. Curtis Mills, Collier County Sheriff's Department, Sgt. J. C. Boswell, Homicide Squad, Memphis P.D. and Investigator Harold Young, Collier County Sheriff's Department. Bill, we're going to advise you of your rights once more, since you've talked to us you want to tell us about this thing, and you want it on tape, is that correct?
>
> CHRISTOPHER: Right.
>
> YOUNG: Okay. You have the right to remain silent. You understand that?
>
> CHRISTOPHER: Yes, sir.
>
> YOUNG: Anything you say, can and will be used against you in a court of law. You understand that?
>
> CHRISTOPHER: Yes, sir.
>
> YOUNG: *You have the right to talk to a lawyer and have him present with you while you are being questioned. Do you understand that?*

CHRISTOPHER: *Yes, sir.*

YOUNG: If you can't afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish. Do you understand that?

CHRISTOPHER: Yes, sir

YOUNG: *You can decide at any time to exercise these rights, and no answer any questions or make any statements. Do you understand that?*

CHRISTOPHER: *Yes, sir.*

YOUNG: Do you understand each of these rights that I have explained to you?

CHRISTOPHER: Yes, sir.

YOUNG: *Having these rights in mind, do you wish to talk to us now?*

CHRISTOPHER: *Yes, sir.*

YOUNG: *Bill, would you rather have an attorney here at this time?*

CHRISTOPHER: *No*, sir.

YOUNG: Okay. *Are you going to give a statement on your own free will without threat, promise?*

CHRISTOPHER: *Right.*

YOUNG: Okay. Would you go ahead and tell us, you talked to us off tape, you said you wanted to make a taped statement, rather than a written statement?

CHRISTOPHER: Right.

YOUNG: This tape will be transcribed, and you can read it and sign it later, is that correct?

CHRISTOPHER: Right.

YOUNG: Okay. Just in your own words, do you want to go ahead and tell us what you told us a minute ago, in reference to this ah, --

CHRISTOPHER: Okay. Should I just start from that morning?

YOUNG: Just start from what led up to it, okay? I think that's all we need, isn't it?

CHRISTOPHER: Okay. Ah --"

(A193-194)
[emphasis added]

At the conclusion of the Petitioner's taped confession to the two killings the following exchange occurred:

"YOUNG: Ah, we're going to end this interview now, ah, Bill, But we want ah, *have you been promised or threatened or anything --*

CHRISTOPHER: *No, sir, I haven't been promised. I haven't been threatened*

YOUNG: -- in return for your statements? *What is the reason for you giving this statement?*

CHRISTOPHER: *The main reason I'm giving this statement is to clear my daughter of anything, because she's not guilty of nothing*, and my family, ah it's like Capt. Smith said awhile ago, ah, he's willing to let my brother and my sister go, I mean, they, they had been charged with accessory after the fact, they're not guilty of it.

YOUNG: No one -- *has anyone accused your daughter of murder?*

CHRISTOPHER: Her mother has. Her natural mother.

YOUNG: I mean, I mean, I'm talking about the police?

CHRISTOPHER: *No, not that I know of*, off -- I, just what I heard, I heard from my aunt that Walter Kruse, which is a police officer here in Memphis that I grew up with, said that the warrant was coming in, that they believe that ah, that my daughter had killed Bertha, and I had killed Charlie, and that isn't so, because my dauther was in school.

YOUNG: Bill, that you're giving that statement on your own free will?

CHRISTOPHER: *I was giving it on my own free will.*

YOUNG: Okay. We want to end this statement now, we end at 10:44 on September the 22nd, 1977."

(A206-207)

After hearing the above testimony and tape-recorded statements, the trial judge denied Petitioner's motion to suppress, specifically finding that Petitioner had voluntarily and knowingly waived his right against self-incrimination (A127). The trial judge further found:

". . . the Court's of the opinion that the law enforcement officers in the first instant did not offer any promise of

leniency for the defendant's family, and that the statement was not based upon hope for any leniency because the officers just did not offer it to him in examining the record as a whole."

(A137)

SUMMARY OF THE ARGUMENT

This Court cannot consider the Petitioner's proposed federal constitutional issue for certiorari review since it was never previously raised before the state trial court. Even if it had been properly raised, Petitioner has not presented a real and substantial federal questions that would be dispositive of the cause. Petitioner voluntarily confessed to the murder on his own free will, after being made aware that his family members had not been implicated in the murders and after receiving detailed and painstaking Miranda warnings for a third time. Thus, even if Petitioner's conduct could be deemed as indicating a desire to remain silent, this desire was unequivocally, knowingly, and voluntarily waived.

ARGUMENT

THIS COURT SHOULD NOT ISSUE THE WRIT SINCE THERE IS NOT ANY REAL AND SUBSTANTIAL FEDERAL QUESTION RIPE FOR REVIEW WHICH WOULD BE DISPOSITIVE OF THE ISSUES IN THIS CAUSE.

As a general rule, in order for a state court decision to be subject to certiorari review by this Honorable Court on the ground that a "federal question" is involved, it is necessary that such a question be "real and substantial". Martin v. Walton, 368 U.S. 25 (1961); Wilner v. Character Committee, 373 U.S. 96 (1963). It is also necessary that a decision thereof should be essential to disposition of the issues presented in the case. Durley v. Mayo, 351 U.S. 277 (1956). The U.S. Supreme Court has always been wary of assuming jurisdiction of a case from state court on grounds of a "federal question", and a policy of strict necessity will be applied. Mental Hygiene Department v. Kirchner, 380 U.S. 194 (1965); Sanks v. Georgia, 401 U.S. 144 (1970). This Court has been "consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is of importance to the *public* as distinguished from that of the *parties*". Rice v. Sious City Cemetary, 349 U.S. 70, 99 L.Ed.2d 897, 75 S.Ct. 614 (1955).

In the Petitioner's application for a writ of certiorari, he has not presented a "real and substantial federal question" for review which is dispositive of the cause or of great public importance.

It must be initially pointed out that the Petitioner had not raised this federal constitutional issue in the state trial court. In the motion to suppress his confession, the Petitioner raised two grounds for suppression: He alleged

that the confession was 1) involuntary because it was induced by promises of leniency, either express or implied, for members of his family, and 2) that the waiver of Miranda[4] rights was a "nullity" because he never stated that he did not wish to consult with a lawyer prior to interrogation (A1-2). These are the same (and only) two grounds argued at the suppression hearing (A4-5). However, not only are these particular claims unsubstantiated and contradicted by the dialogue in the record, but these particular grounds have not even been challenged on appeal to the Florida Supreme Court on in this Court.

Petitioner does not allege or even infer in the Petition sub judice that his confession was constitutionally impermissible due to involuntariness or a null and void waiver as asserted at trial. Rather, he contends that he had indicated "in any manner" that he wished to remain silent, and that the officers had failed to "scrupulously honor" his right to cut off questioning.

Under Florida law, where an objection to the admission of certain evidence is on a particular ground, no new or other grounds may be considered by the reviewing court. North v. State, 65 So.2d 77 (Fla. 1952); Shea v. State, 167 So.2d 767 (Fla.3d DCA 1964); Bertone v. State, 224 So.2d 400 (Fla.3d DCA 1969) cert. den. 234 So.2d 117 (Fla. 1970) U.S. cert. den. 398 U.S. 943 (1970); Russell v. State, 270 So.2d 462 (Fla.3d DCA 1972); Parker v. State, 369 So.2d 112 (Fla.1st DCA 1979). Florida law also clearly states that an appellate court will not consider an issue, even of constitutional dimensions, which is raised for the first time on appeal. Silver v. State, 188

4/ Miranda v. Arizona, 384 U.S. 436 (1966).

So.2d 300 (Fla. 1966); Whitted v. State, 362 So.2d 668 (Fla. 1978). Further, it was established long ago by this Court that it will not decide federal constitutional issues raised here for the first time on review of state court decisions. Cardinale v. Louisiana, 394 U.S. 437 (1966). Thus, the issue asserted by Petitioner should not be considered now.

Even if the suggested "federal question" could be considered as properly presented to this Court, the texts of the suppression hearing and the Petitioner's taped statements reveal that when the Petitioner clearly expressed his wish to terminate the first taping session, the Petitioner's wish was scrupulously honored (A190). His taped confession did not come until almost two hours later, after receiving full and detailed Miranda warnings for a third time, and waiving those rights (See A193-194).

Under Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1604 (1966), once an individual in custody indicates in any manner that he wishes to remain silent, the interrogation must cease. However, as was emphasized in Mosley, this Court has rejected a literal interpretation of Miranda, holding that the exercise of the right to remain silent does not preclude all further questioning. Statements obtained after an initial exercise of the right to remain silent are admissible where the individual's "right to cut off questioning" has been "scrupulously honored". Mosley, 423 U.S. at 104-107. Further, an accused can voluntarily and knowingly waive his rights against self-incrimination, especially after being advised of their existence. Miranda, 384 U.S. at 471, 475. This Court in Mosley observed that the majority's "only stated purpose" in Miranda is "to exclude all confessions

which are the result of involuntary waivers. To exclude any others is to deprive the factfinding process of highly probative information for no reason at all." Mosley, 423 U.S. at 111.

In support of his Petition, the Petitioner claims that it is necessary for this Court to explain the term, "in any manner", as used in the context of Miranda, in order to decide whether he had ever actually invoked his right to remain silent. However, under the facts of this case sub judice, Petitioner's suggested "substantial federal question" would not even arguably be dispositive.

The record reveals that the Petitioner had at first been given his Miranda rights on two occasions and expressly stated that he understood his rights, did not want an attorney, and would talk with the officers (A13-14). After Petitioner told his lengthy "murder-suicide" story and denied he was a killer, the officers expressed their disbelief (A177-178). Defensively, Petitioner made the qualified statement that *if* the officers were accusing him of murder, he had "nothing else to say" (A185). At that point, the officers reminded the Petitioner that he was originally brought for questioning upon a warrant charging him with these murders (A184). The Petitioner continued to express his daughter's non-involvement (A185). It was followed by a very brief discussion concerning Petitioner's family members and the extradition procedures (A185-190). The tape recorder was promptly turned off at Petitioner's request (A190).

After this, the transcript of the Motion to Suppress hearing indicates that the Petitioner, not the deputies, then began asking questions (A100). He wanted to know what was

going to happen to Norma and his brother and sister. Then, without being questioned, he reassured the deputies that Norma had nothing to do with the situation and he recounted the same suicide-murder story again (A19, 70, 101). The conversation was casual; the deputies and Petitioner were drinking coffee, smoking cigarettes and taking a break (A70). Petitioner then complained about being cold down in the jail and the Captain assured him that he would get a jacket (A70).

After Petitioner had recounted his murder-suicide story again, Mills told Petitioner that his story just didn't match up to the facts as they knew them (A102). Then Captain Smith told Petitioner that there had to be a logical explanation for what occurred and it might be logical to Petitioner.

> "A. (By Mills) Bill didn't say anything right away. He just kind of remained silent there for a few minutes, and then he started talking about when Norma was born."
>
> (A102)

Following the Petitioner's period of silence, the Petitioner's narrative started with Norma's birth and culminated in a confession to the two murders. The law accords him the opportunity to voluntarily change his mind and confess, Witt v. State, 342 So.2d 497 (Fla. 1977) cert. den. 434 U.S. 935 (1977).

After the narrative, Petitioner called his mother and then agreed to make a statement on tape after being assured that his sister and brother were not being charged (A72). He was again given his Miranda rights for a third time, which he specifically waived in detail (A193-194). The confession which Petitioner sought to suppress at trial was then taped (A192-207). At the end of the tape, Petitioner stated that

the confession was given of his own free will, without promises or threats, and for the purpose of clearing his family from implication (A206-207).

As in Michigan v. Mosley, 423 U.S. 96 (1975), this is not a case "where the police failed to honor a decision of a person in custody to cut off questioning, either by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind", Mosley, 423 U.S. at 105, 106. Rather, this is a situation where the Petitioner voluntarily continued a discussion, after being made aware that his family members were not being charged in the killings, and decided to render a full narrative confession.

Upon discussing Mosley, the Court articulated in United States v. Mearns, 443 F. Supp. 1244, 1253 (D.Del. 1978) that not all statements made by a person after once deciding to cut off questioning is subject to suppression:

> "The question in each case must be whether under all the circumstances it can be said that the resumption of questioning was consistent with scrupulous observance of the right to cut off questioning. Where the law enforcement officials terminate the questioning on request, for example, and therafter resume questioning *after a change in circumstances giving rise to an inference that the person in custody may then wish to speak for reasons unrelated to the conduct or strategy of his inquisitions*, there is no conflict between the exercise of the right to remain silent and the resumption of questioning. Thus, *the discovery of new facts*, or a distinct charge of which the person may be suspected, or even the passage of a substantial period of time giving opportunity for reflection, may warrant a finding that there was no violation of the right to terminate interrogation."

Thus, even if the Petitioner had initially indicated "in any manner" that he had wished to cut off questioning, he subsequently waived his right against self-incrimination, did

so expressly, knowingly, and unequivocally, and this was done after discovery of the fact that his family members were not to be charged or implicated in the murders. There was no arguable violation of Petitioner's right to terminate interrogation. The confession was voluntary and properly admitted for the consideration of the jury along with the first tape. The jury heard them both as well as the testimony of the officers concerning what occurred between the tapes. No error has occurred.

CONCLUSION

The Petitioner has failed to present a real and substantial federal question for review which would be dispositive of the instant cause. Based upon the foregoing arguments and authorities the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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